UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Florida Power & Light Company	Docket Nos. ER93-465-036 ER96-417-005 ER96-1375-006 OA96-39-013 OA97-245-006

ORDER DENYING REHEARING

(Issued July 6, 2006)

1. This order denies a request for rehearing by Florida Power and Light Company (FP&L), submitted in response to the Commission's order issued in this proceeding on December 15, 2005,[1] that accepted a prior compliance filing in part, rejected it in part, and directed FP&L to make a further compliance filing. We also direct FP&L to make the compliance filing we directed in the December 15 Order within 60 days of the date of this order.

Background

2. This case has a long history dating back to 1993, when FP&L completed a comprehensive restructuring of its then-existing tariff structure, including a new open access transmission tariff.

3. On January 18, 1996, in Docket No. ER96-417-000, the Commission accepted for filing and suspended FP&L's network integration transmission service tariff.[2] On September 18, 2000, in Docket No. ER93-465-000, *et al.*, the Commission accepted a settlement agreement that fully resolved most of the rate issues related to the network integration transmission service tariff.[3] On April 6,

[1] *Florida Power and Light Company*, 113 FERC ¶ 61,263 (2005) (December 15 Order).

[2] *Florida Power and Light Company*, 74 FERC ¶ 61,021 (1996).

[3] *Florida Power and Light Company*, 92 FERC ¶ 61,241 (2000).

2006, the Commission accepted a further settlement agreement that resolved these remaining issues.[4]

4. The Commission addressed the three remaining, unsettled issues on December 16, 2003,[5] and directed FP&L to make a compliance filing revising its proposed rate schedules to exclude those FP&L facilities that fail to meet the same integration test applied to its network service customer, Florida Municipal Power Agency (FMPA), in Docket Nos. EL93-51 and TX93-4.[6] The Commission also required that FP&L in the "compliance filing should identify, as to those FP&L facilities whose costs were included in the rates which were objected to by FMPA, why they should be included in the rates and why they are or are not comparable to FMPA's facilities."[7]

5. On May 14, 2004, FP&L submitted a proposed revised rate schedule, in which it proposed to reduce FMPA's network integration transmission rate by approximately $20 million (May 14 Compliance Filing). FP&L explained that it analyzed facilities, beginning at the 69 kV voltage level, using a 1998 test year. FP&L also explained that it distilled the relevant test to four factors (TX Case Factors) and that a facility had to pass each to be considered integrated. FMPA protested, arguing that the May 14 Compliance Filing did not achieve comparability.

6. On January 25, 2005, the Commission agreed that the filing did not satisfy the comparability requirement.[8] Specifically, the Commission found that use of 1998 as a base year did not achieve comparability as compared to the

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[4] *Florida Power and Light Company*, 115 FERC ¶ 61,020 (2006).

[5] *Florida Power and Light Company*, 105 FERC ¶ 61,287 (2003) (December 16 Order), *reh'g denied*, 106 FERC ¶ 61,204 (2004).

[6] *Florida Municipal Power Agency v. Florida Power & Light Company*, 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *clarified*, 74 FERC ¶ 61,006 (1996), *reh'g denied*, 96 FERC ¶ 61,130 (2001), *aff'd*, *Florida Municipal Power Agency v. FERC*, 315 F.3d 362 (D.C. Cir. 2003), *cert. denied*, 540 U.S. 946 (2003) (TX Case).

[7] December 16 Order at P 16 (citation omitted).

[8] *Florida Power and Light Company*, 110 FERC ¶ 61,058 (2005) (January 25 Order).

determination of the integration of FMPA facilities in the TX Case.[9] The Commission also found that, while FP&L's TX Case Factors test could be a just and reasonable way to ensure rate treatment comparability between its own and FMPA's facilities, FP&L did not properly apply the test to its own facilities. Specifically, the Commission found that FP&L: (1) failed to exclude all radial facilities and associated equipment; and (2) did not test its transmission facilities for unneeded redundancy.[10] The Commission did accept FP&L's proposed net plant methodology to adjust the settlement rate, but required FP&L to demonstrate the integration of its transmission facilities as of 1993 and adjust the settlement rate established in 2000 using 1993 plant cost data.[11]

7. On April 25, 2005, FP&L made a new compliance filing (April 25 Compliance Filing). In it, FP&L proposed to remove from the rate it charges FMPA for network integration transmission service approximately $29 million in costs.

8. On December 15, 2005, the Commission issued an order which accepted that portion of the April 25 Compliance Filing which removed from FP&L's transmission rates all radial transmission facilities. However, the Commission noted that it was not clear whether FP&L had tested its non-radial facilities in a manner comparable to the way it tested FMPA's facilities, specifically regarding FP&L's second TX Case Factor, which states that a facility that provides only unneeded redundancy is ineligible for cost recovery. Noting that, notwithstanding a statement by FP&L's witness, Mr. Sanchez, that he had tested the facilities "to ensure that these criteria, which are consistent with those used by [FP&L] in identifying its transmission needs and are in accordance with North American Electric Reliability Council [(NERC)] and [Florida Reliability Coordinating Council (FRCC)] reliability criteria, were satisfied,"[12] the Commission was not convinced that NERC and FRCC reliability criteria were satisfied. In particular, the Commission noted that its review of the compliance filing revealed that there were a number of test cases in which the only reliability violations were what FP&L described as "unserved load," and which did not demonstrate any thermal

[9] *Id.* at P 10.

[10] *Id.* at P 11.

[11] *Id.* at P 17.

[12] April 25 Compliance Filing at 8.

rating or voltage violations.[13] Accordingly, the Commission directed FP&L to submit a compliance filing:

> [c]larifying the definition of "unserved load," and excluding those facilities that do not result in violation of NERC and FRCC reliability criteria following single contingencies. FP&L can justify the inclusion in transmission rate base of a test case facility if it can demonstrate specifically the "unserved load" in question is not connected to the line or transformer which constitutes a first contingency.[14]

9. On January 17, 2006, FP&L filed a request for rehearing. FP&L maintains that, in the December 15 Order the Commission did not comply with its comparability standards because it determined unneeded redundancy in a manner inconsistent with precedent. Specifically, FP&L challenges the determination that an "FP&L facility provides more than unneeded redundancy only if *two* conditions are met. That is, [FP&L] must show that, under the test cases, load cannot be served by [FP&L] in the area of the facility being tested *and* (simultaneously) that load cannot be served by [FP&L] in other load centers."[15] In addition, FP&L argues that the Commission erred because, it "for the first time in this proceeding introduced [NERC and FRCC] reliability standards to its analysis."[16]

10. On January 18, 2006, FP&L filed a motion for a deferral of the date for submitting the compliance filing until 60 days after issuance of this order on rehearing. Such extension was granted on January 30, 2006.

11. On January 24, 2006, Edison Electric Institute (EEI) filed a request for late intervention and comments in support of FP&L's request for rehearing. EEI states that it does not believe that the Commission needs to interpret NERC standards in this proceeding. In general, EEI believes that the Commission should rely on NERC to provide interpretations of its standards, but argues that the particular standard at issue in this case is straightforward and the Commission's interpretation is inconsistent with the plain language of the standard, as well as

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[13] December 15 Order at P 21-23.

[14] *Id.* at P 25 (footnote omitted).

[15] FP&L Request for Rehearing at 11 (emphasis in original).

[16] *Id.* at 3.

ongoing Commission policies designed to increase transmission investment and enhance reliability.

12. On February 3, 2006, FMPA filed an answer to EEI's motion for untimely intervention, and a motion for leave to answer and an answer to FP&L's request for rehearing. FMPA states that EEI's arguments are irrelevant to the proper decision of this case but that, in answering EEI's arguments, it of necessity also is responding to FP&L's request for rehearing. FMPA argues that FP&L waived the right to object to the Commission's comparability standard (which FMPA believes was correctly expressed, in any case) by its failure to seek rehearing of the January 25 Order.

13. On February 21, 2006, FP&L filed an answer to FMPA's February 3 Answer. FP&L disputes: (1) FMPA's contention that FP&L waived its right to seek rehearing of the way the test for unneeded redundancy is applied; and (2) FMPA's argument that FP&L's application of that test turns on ownership.

14. On March 3, 2006, FMPA filed an answer to FP&L February 21 Answer. FMPA argues that the Commission should reject FP&L's February 21 Answer. In support, FMPA states that, because the Commission's January 25 Order is clear and the fact that FP&L did not seek rehearing is undisputed, FP&L's first argument does not add anything to the Commission's decision, and the second argument merely rehashes positions that miss the fact that the FP&L's system must achieve comparability.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[17] will reject EEI's untimely motion to intervene for failure to demonstrate good cause warranting late intervention. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such

[17] 18 C.F.R. § 385.214 (2005).

late intervention.[18] EEI has not met this higher burden of justifying its late intervention.[19]

16. We will reject FMPA's February 3 Answer to the untimely intervention as moot. Additionally, we will reject FMPA's February 3 Answer to FP&L's rehearing request as a prohibited answer to a request for rehearing under Rule 713(d) of the Commission's Rules of Practice and Procedure,[20] and accordingly dismiss both FP&L's February 21 Answer to FMPA's February 3 Answer and FMPA's March 3 Answer to FP&L's February 21 Answer.

Comparability

17. We will deny as untimely FP&L's request for rehearing that the Commission erred in determining that FP&L's April 25 Compliance Filing failed to comport with comparability standards. As we described above, in 2003, in the December 16 Order, we directed FP&L to revise its proposed rate schedules to ensure that it was only including those FP&L facilities that met the same integration test FP&L applied to FMPA in the TX Case. In that order, we noted that, as far back as 1996, FMPA had argued:

> In its compliance filing, [FP&L] should be ordered to remove from rate base all non-backbone transmission facilities which, to paraphrase [the TX Clarification Order], are connected to the backbone grid only at single points, which are used only to transfer power between [FP&L] backbone transmission and [FP&L] retail delivery points. [74 FERC at 61,010.] These facilities may perform a transmission function for the benefit of [FP&L's] retail customers, but they are not used to benefit [FMPA] or any other party. *Id.* For the same reason, *i.e.*, that the facilities benefit only one

[18] *See, e.g.*, *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,520 at P 7 (2003).

[19] In any event, EEI also filed more than 30 days after the order issued. Such late-filed challenges to Commission orders are barred by the Federal Power Act (FPA). 16 U.S.C. § 825*l*(a) (2000).

[20] 18 C.F.R. § 385.713(d) (2005).

> customer, the Commission should order [FP&L] to exclude radials from the transmission rate base.[21]

18. On June 18, 2004, in response to FP&L's May 14 Compliance Filing, FMPA repeatedly argued that facilities should be excluded if they only benefit one customer.[22] On July 6, 2004, FP&L filed a response in which it repeatedly decried FMPA's attempt to "subfunctionalize" FP&L's facilities.

19. In 2005, in the January 25 Order, we directed:

> [I]n the compliance filing we order herein, FP&L should apply the test to each of its transmission facilities . . . and demonstrate, through modeling the system with and without the facility, that each facility included in its transmission rate base was needed to deliver power to customers in the area where the facility is located *and* to other FP&L load centers.[23]

20. FP&L did not seek rehearing of the January 25 Order; FP&L instead simply failed to comply with the Commission's directive. That we intended the test to require a facility to be needed to deliver power to customers in the area where the facility is located *and* to other FP&L load centers is clear from the language of the January 25 Order – issued almost a year before FP&L's request for rehearing now

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[21] December 16 Order at P 16 n.27, *citing* FMPA January 29, 1996 Brief on Exceptions at 103, 107 (citation omitted).

[22] *See, e.g.*, FMPA Answer at 10 and 38 ("facilities that solely benefit servicing a company's retail load" should be excluded); FMPA Answer at 28 ("facilities must provide more than incidental *added* benefits to other customers and not just to the owner of the facilities") (emphasis in original); FMPA Answer at 33 (in the TX Case, the "Commission denied credits because FMPA's transmission was (assertedly) not necessary for *other* transmission customers") (emphasis in original).

[23] January 25 Order at P 13 (citations omitted; emphasis added).

before us.[24] By failing to seek rehearing on a timely basis, FP&L is barred from now challenging that determination.[25]

NERC and FRCC Standards

21. As a preliminary matter, we note that FP&L is incorrect in alleging that it was the Commission which "for the first time in this proceeding introduced" NERC and FRCC standards.[26] As described above, and as we pointed out in the December 15 Order, it was *FP&L's* witness, Mr. Sanchez, who stated that he had tested the facilities "to ensure that these criteria, which are consistent with those used by [FP&L] in identifying its transmission needs and are in accordance with [NERC] and [FRCC] reliability criteria, were satisfied."[27] Moreover, in the December 15 Order, the Commission merely reviewed the application of the NERC and FRCC standards (which FP&L introduced) to FP&L's test cases.[28]

22. In any event, the tested facilities that resulted only in unserved load violations (unserved load facilities)[29] fail FP&L's comparability test regardless of

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[24] Moreover, from the fact that, after the May 14 Compliance Filing, FP&L and FMPA were disputing the need for a facility to benefit more than one customer, it is clear that FP&L was aware of this issue.

[25] Section 313(a) of the FPA, 16 U.S.C. § 825*l*(a) (2000), provides thirty days from the date of an order for parties to seek rehearing of that order.

[26] FP&L Request for Rehearing at 3.

[27] December 15 Order at P 21, *citing* April 25 Compliance Filing at P 8.

[28] By "test cases" we mean simulations in which the tested facility is assumed not to exist so as to determine if the facility is redundant – *i.e.*, whether FP&L's transmission system meets NERC and FRCC reliability criteria without that particular facility.

[29] FP&L tested facilities for unneeded redundancy. *See* December 15 Order at P 23. A number of facilities, during contingencies, violated one of three reliability criteria identified by FP&L: (1) load was shed; (2) thermal ratings were violated; or (3) voltages at substations were at or above 95 percent of normal voltage. A number of these test cases did not demonstrate the latter two violations, *i.e.*, thermal rating or voltage violations, but rather showed a violation only of the first of the three criteria, *i.e.*, load was shed, characterized above as "unserved load" violations. The facilities involved in these latter test cases are thus characterized as "unserved load" facilities. *Id.*

how one interprets the applicable NERC and FRCC standards. The reason we determined that the "unserved load facilities" failed the comparability test was because we found that FP&L failed to demonstrate (as directed in the January 25 Order and not challenged by FP&L in a timely fashion) that each of these facilities was needed to deliver power to other FP&L load centers.[30] Moreover, that we used the NERC and FRCC standards (which FP&L first raised) to evaluate FP&L's reliability criteria is beside the point, given that FP&L *still* has not demonstrated, as directed, that these facilities are used to deliver power to customers in that area *and* to other FP&L load centers.[31] More specifically, if a tested facility produces only an unserved load violation (with no other resulting violations on the system, either thermal or voltage violations), that facility does not pass the second part of FP&L's "and" test, regardless of how one interprets NERC Standard TPL-002-0, as that facility is not needed to deliver power to other FP&L load centers. Thus, the Commission did not need to interpret NERC and FRCC Standards in order to make a determination in this case.[32]

23. Accordingly, we will again direct FP&L to make a further compliance filing, within 60 days of the date of this order, in keeping with our directives in the January 25 and December 15 Orders. FP&L should exclude from its rate base, consistent with the discussion above, all facilities that produce only an unserved load violation for load directly connected to facilities that are taken out of service as a first contingency and, as such, that are not used to deliver power to other FP&L load centers.

The Commission orders:

(A) EEI's untimely motion to intervene is hereby denied, as discussed in the body of this order.

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[30] *Id.* at P 23-24.

[31] We again note that our determination of which facilities are not eligible for transmission rate base inclusion is a very narrow determination aimed at achieving comparability to the test FP&L devised to test FMPA's facilities in the TX Case. In other circumstances, we would typically find these looped facilities to be integrated transmission facilities. *See, e.g., Northeast Texas Electric Cooperative, Inc.*, 111 FERC ¶ 61,189 at P 13-19 (2005).

[32] We also note that our determination in this case is fact-specific and is unrelated to our establishment of reliability standards or development of transmission incentives.

(B) FMPA's February 3 and March 3 Answers and FP&L's February 21 Answer are hereby rejected or dismissed, as appropriate, as discussed in the body of this order.

(C) FP&L's request for rehearing is hereby denied.

(D) FP&L is hereby directed to make a compliance filing, as directed in the December 15 Order, within 60 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.